

IN AND FOR THE DISTRICT OF ARIZONA

**ORDER RE: ADMINISTRATIVE
CLAIM OF GUENTHER PROPERTIES,
LLC**

Case 2:06-bk-02953-CGC	Doc 276	Filed 03/08/07	Entered 03/08/07 16:05:50	Desc
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1 effective date was intended to be anything other than the date of entry. Landlord argues that *At*
2 *Home* does not authorize retroactive treatment where the Debtor did not request *nunc pro tunc*
3 treatment. Further, Landlord argues that *At Home* requires the satisfaction of the four elements
4 considered by the Court of Appeals in examining whether the Bankruptcy Court abused its
5 discretion. This Court does not read *At Home* so narrowly. The Court of Appeals considered the
6 four factors described because those are the four factors that the Bankruptcy Court considered in
7 exercising its discretion. There is no exclusive list of factors, but the Court must nevertheless
8 examine the record and articulate any reasons it relies upon if the date is to be altered from the date
9 of approval. This can be done now in the context of Landlord's application for administrative
10 expense as easily as at the time of the rejection motion.

11 In this case, as in most cases dealing with this issue, the key issue is when possession of the
12 premises was passed from the Debtor to the Landlord. This factor is economic and pragmatic; so
13 long as the Debtor has possession of the Landlord's property, it should pay for it; once the Landlord
14 retakes possession and the property may be relet, the basis for a continuing administrative claim
15 pending approval of a motion to reject substantially diminishes.

16 The record is unclear on this point. Debtor insists that the premises were turned over to the
17 Landlord on October 11 when the motion to reject was filed and that they were in broom clean
18 condition ready to be relet to a new tenant. Landlord insists that, although the inside of the premises
19 were vacated, the loading dock is inaccessible because of vehicles and storage units owned by the
20 Debtor. Although the parties may present evidence on other issues that bear on the Court's exercise
21 of its discretion, resolution of this dispute will be the most important factor.

22 Counsel are directed to consult on this matter and agree on a process for presenting necessary
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1 evidence as soon as possible. Counsel shall then contact the courtroom deputy and the matter can
2 be heard for scheduling purposes at a telephonic conference.

3 So ordered.

4 **DATED:** March 8, 2007

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7 CHARLES G. CASE II
UNITED STATES BANKRUPTCY JUDGE

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9 Copy of the foregoing mailed by the BNC and/or
sent by auto-generated mail to:

10 Michael W. Carmel
11 MICHAEL W. CARMEL, LTD.
12 80 East Columbus Avenue
Phoenix, Arizona 85012-2334
Attorney for Debtors

13 Scott B. Cohen
14 SACKS TIERNEY P.A.
15 4250 North Goldwater Blvd., 4th Floor
Scottsdale, Arizona 85251-3693
Attorneys for Guenther Properties, LLC

16 Bradley J. Stevens
17 JENNINGS, STROUSS & SALMON, P.L.C.
18 The Collier Center, 11th Floor
201 West Washington Street
19 Phoenix, Arizona 85004-2385
Counsel for the Official Unsecured
Creditors Committee

20 OFFICE OF THE U.S. TRUSTEE
21 230 North First Avenue, Suite 204
Phoenix, Arizona 85003-1706